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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,852	07/24/2003	Paul Michael Fennessy SR.	7241	8944

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EXAMINER

HARTMANN, GARY S

ART UNIT PAPER NUMBER

3671

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/625,852

Applicant(s)

FENNESSY, PAUL MICHAEL

Examiner

Gary Hartmann

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

The abstract of the disclosure is objected to because it refers to the purported merits of the invention. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-8 and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe (U.S. Patent 5,320,790).

Lowe discloses a stamp (Figure 17, for example) having a forming surface (20) provided thereon. The forming surface has an interior for forming a semi-solid material into a predetermined shape and an exterior (Figure 18, for example). There is a pressure-relief element (30), which is sized and configured for air movement, provided adjacent the forming element. Lowe does not teach the continuous curvature; however, Lowe does teach the inner portion of the mold to have a truncated dome shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a continuous curvature with Lowe in order to reduce the material needed to make the stamp; thereby reducing cost of the apparatus and ease handling of the stamp.

The pressure-relief element includes a hole (Figure 18, for example), which is configured for equalizing interior and exterior pressure.

The forming element (20) includes truncated domes (Figure 18, for example) arranged in aligned columns (Figure 17, for example).

Lowe does not teach the truncated cone shape; however, it is well known to use a truncated dome shape for the surface of a tactile warning surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a truncated dome with the tool of Lowe in order to obtain a desired configuration of the surface. Additionally, since it is standard practice in molding to utilize different shapes in order to configure articles having various configurations, a change in shape is not patentably distinguish the apparatus in this instance.

Lowe is silent regarding the relationship between column spacing a wheelchair tire width; however, since Lowe is specifically concerned with walkway safety, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the spacing as claimed in order to improve safety.

The stamp is optionally made from an elastomeric material.

### ***Response to Arguments***

Applicant's arguments filed June 9, 2004 have been fully considered but they are not persuasive. Because the shape of the portion of the mold that makes the final product is the same in Lowe as it is in the present application; and because the holes are made for the same purpose, the rejection is proper. Note that absent any persuasive evidence that the particular configuration

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of the apparatus is significant, shape is a matter of choice obvious to one skilled in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Hartmann  
Primary Examiner  
Art Unit 3671

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